

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. ) NO: 14-CV-1025 RB-SMV  
 )  
THE CITY OF ALBUQUERQUE, )  
 )  
Defendant. )

TRANSCRIPT OF PROCEEDINGS  
TELEPHONIC STATUS CONFERENCE  
BEFORE THE HONORABLE ROBERT C. BRACK  
UNITED STATES DISTRICT JUDGE  
THURSDAY, FEBRUARY 8, 2018  
11:01 A.M.  
LAS CRUCES, DOÑA ANA COUNTY, NEW MEXICO

(Proceedings recorded by machine shorthand and  
transcript produced by Computer-Aided Transcription.)

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5 BY: ELIZABETH M. MARTINEZ, ESQ.

6 and

7 U.S. DEPARTMENT OF JUSTICE  
Civil Division  
8 601 D. Street NW, Room 5422  
Washington, D.C. 20004  
9 BY: COREY M. SANDERS, ESQ.

10 and

11 U.S. DEPARTMENT OF JUSTICE  
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13 BY: PAUL KILLEBREW, ESQ.

14 FOR THE CITY OF ALBUQUERQUE:

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18  
19 FOR THE ALBUQUERQUE CITY COUNCIL:

20 WALZ AND ASSOCIATES  
133 Eubank NE  
21 Albuquerque, NM 87123  
22 BY: JERRY A. WALZ, ESQ.

23 FOR THE INTERVENOR APOA:

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1 TELEPHONIC APPEARANCES continued:

2 Also Present:

3 DR. JAMES D. GINGER  
4 Court-appointed Independent Monitor

5 CHIEF MICHAEL GEIER  
6 DEPUTY CHIEF ERIC GARCIA  
7 DEPUTY CHIEF ART GONZALEZ  
8 DEPUTY CHIEF ROGER BAÑEZ  
9 LIEUTENANT CORI LOWE  
10 Albuquerque Police Department

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DIONNA K. FORD, Law clerk

1 (On the record at 11:01 A.M.)

2 THE COURT: Good morning. This is *United States*  
3 *of America versus City of Albuquerque*. We're here for our  
4 February 2018 monthly status conference.

5 Folks, why don't you let us know who all is on  
6 the line, please. Let's start with the City of Albuquerque.

7 MR. SCHMEHL: Good morning, Your Honor. This is  
8 Assistant City Attorney Jeramy Schmehl. I'm here with  
9 acting City Attorney Samantha Hults; Michael Geier, Chief of  
10 Police; Lieutenant Cori Lowe; Deputy Chief Eric Garcia;  
11 Deputy Chief Art Gonzalez; and Deputy Chief Deputy Chief  
12 Roger Bañez.

13 THE COURT: Good morning to everyone. Thank you  
14 for your appearances.

15 And on behalf of the Government?

16 MS. MARTINEZ: Good morning, Your Honor.  
17 Elizabeth Martinez. And we also have Paul Killebrew.

18 Is Corey Sanders on also, Paul?

19 MR. KILLEBREW: Yes.

20 THE COURT: And Corey Sanders.

21 MS. HULTS: This is Samantha Hults. We also have  
22 Jerry Walz, who is independent counsel for the City Council  
23 on the line.

24 THE COURT: Thank you. Good morning, Mr. Walz.

25 MR. WALZ: Good morning, Your Honor.

1 THE COURT: And how about from APOA?

2 MR. MOWRER: This is Fred Mowrer on behalf of the  
3 Albuquerque Police Officers Association.

4 THE COURT: Yes, sir. Mr. D'Amato and  
5 Mr. Willoughby aren't there this morning?

6 MR. MOWRER: No, sir, not that I'm aware of.

7 THE COURT: And Dr. Ginger, are you there?

8 DR. GINGER: I am, Your Honor.

9 THE COURT: Great. Anyone else on the line this  
10 morning?

11 LAW CLERK: Judge, this is Dionna. I'm here.

12 THE COURT: Thank you, Dionna.

13 So the first matter on the agenda is an update on  
14 the status of the City Council's Resolution 17-252,  
15 reference the audit of the monitor's performance.

16 Mr. Walz, do you have the lead on that?

17 MR. WALZ: Yes, I do, Your Honor. And again, for  
18 the record, I'm the independent counsel for the City Council  
19 of Albuquerque, for the City Council only.

20 Well, I'm pleased to report that I believe that  
21 we've had significant progress made since our last status  
22 conference. Since then, a request was made on behalf of --  
23 in late January of several of the requesting councilors for  
24 the audit that the Internal Audit Department at this time  
25 discontinue or otherwise not move forward on any type of

1 independent review or audit performance of Public Management  
2 Resources, Inc., and Mr. James Ginger, who is the  
3 independent monitor. It's my understanding that based on  
4 that request, there has been no movement forward by Lawrence  
5 Davis, who is the acting City auditor to conduct such an  
6 audit, as originally was envisioned pursuant to the City  
7 Council's resolution 17-252. Rather the City Council may be  
8 working what I would label as an approach to somehow assess  
9 the type and nature of services rendered and to confirm that  
10 the dollars appropriated and spent were appropriately done  
11 so.

12 Even though Dr. Ginger and the City had agreed to  
13 a flat fee, which apparently has been a financial benefit to  
14 the City, as we heard before from Dr. Ginger, a review of  
15 activities and the validation of the appropriation and  
16 expenditure of taxpayer money is certainly something  
17 reasonable for the City Council to pursue so long as it is  
18 done in the manner to not try to evaluate the performance of  
19 Dr. Ginger -- as we all have acknowledged repeatedly, that's  
20 the Court's sole province -- but to be able to assure  
21 themselves and their constituents that his services were  
22 reasonable, necessary, that he did come to Albuquerque on  
23 "X" days and "X" amount was paid.

24 Now, I'm not in a position, Your Honor, at this  
25 time to provide specific details as to where City Council

1 may want to go with their approach as they will need to meet  
2 to hammer this out. And however, before anything goes  
3 forward, I will work in close conjunction with the City  
4 Attorney's Office, DOJ, and the U.S. Attorney's Office here  
5 in Albuquerque to see if there's any type of objection or  
6 recommendations, and with Dr. Ginger, on perhaps the best  
7 way to proceed, if indeed, the Council even wants to move  
8 forward at this point. But for now, there's just -- there's  
9 nothing on the drawing board.

10 I also would like to report to the Court that we  
11 had a very productive discussion -- by "we," myself, the DOJ  
12 Counsel, Elizabeth Martinez at the U.S. Attorney's Office,  
13 and the acting City Attorney -- as to potential areas that  
14 could be measured and what documents are public record,  
15 pursuant to the CASA. And pretty good suggestions came up  
16 from that discussion that may be of assistance in developing  
17 some type of plan. I'm downgrading it from the word "audit"  
18 to some type of reasonable analysis as to expenditures of  
19 taxpayers' funds. But again, we want to look at activities  
20 that are actually measurable, if indeed, they do go forward.  
21 And again, we all reaffirm that the Court determines the  
22 performance of Dr. Ginger.

23 And as we know from litigation in consent-decree  
24 cases, which I have some familiarity with, that if there's a  
25 challenge to the effectiveness of an expert, monitor,

1 compliance administrator, that would properly be raised as a  
2 challenge through proper motion practice, after consulting  
3 with the principals involved. I want to assure everybody  
4 there's no such motion practice in the works, but we  
5 understand that that would be the appropriate way, if there  
6 ever was such a challenge.

7 Also through the Director of Council Services, it  
8 was acknowledged that the requesting councilors have  
9 successfully opened up a dialogue through this process, they  
10 believe, with the Court and with the DOJ and the City  
11 Attorney's Office. And even though there's always  
12 information in place, as Ms. Martinez has rightfully pointed  
13 out on multiple occasions and sent me a packet of material  
14 that very much validated and substantiated her  
15 representations, the City Council is still an independent  
16 body much involved in this process, but whether they were  
17 getting the appropriate flow of information, input and  
18 output, that was not occurring. But it does appear, through  
19 my actions and through actions of the City Attorney's Office  
20 and a willingness by the City Council to rethink some of  
21 these positions that we have this new dialogue that I don't  
22 think was present before.

23 And Your Honor, that's where we're at at this  
24 point. I'm sorry I can't give you any specifics, but the  
25 City Council will be advised accordingly by myself. Maybe



1     there'll be additional input from the City Attorney's  
2     Office, if there's no conflicts. And there's a lot of  
3     factors we will be looking at and input that will need to be  
4     given. But for now, that's where we're at. And I think  
5     it's all a good sign. And also at the recent status  
6     conference, I believe we had two City Councilors present,  
7     Councilor Benton and Councilor Jones, and I think there  
8     might have been another councilor appearing telephonically,  
9     so they are coming to the plate, taking a more active role,  
10    and I think all these are very good signs.

11                 Also we appreciated Dr. Ginger's explanation of  
12    the work that he's performed and the fact that his services,  
13    if you put them on an hourly scale, are something that most  
14    of us would not want to be paid. And they understand that  
15    fact as well. And that type of communication from  
16    Dr. Ginger is extremely helpful in determining whether the  
17    money is as well spent.

18                 So Your Honor, that's what I have to say at this  
19    juncture. I think Ms. Martinez might have a few comments,  
20    and I'd be glad to answer any questions that the Court may  
21    have.

22                 THE COURT: Thank you, Mr. Walz. And I hear all  
23    of that as very positive.

24                 Ms. Hults, anything from the City Attorney's?

25                 MS. HULTS: Yes, Your Honor, thank you. I just

1 wanted to add a little bit to what Jerry is speaking to  
2 about a flow of information and that I've been in contact  
3 with Council Services about providing them with more  
4 frequent -- the council, as individuals, more frequent  
5 updates and to answer questions about the process or to  
6 update them as to where we are. And Assistant City Attorney  
7 Jeramy Schmehl and I will be meeting with councilors  
8 individually, upon their request, to kind of give them  
9 information that -- or answer questions. I feel like the  
10 more communication between my office and with the assistance  
11 of, you know, Jerry Walz, will help to answer some of their  
12 questions maybe about, not necessarily through an audit, but  
13 about performance or how things are working and moving  
14 forward. And so my office is committed to provide that to  
15 them and assure that that occurs moving forward from this  
16 point on.

17 THE COURT: Well --

18 MS. HULTS: Thank you.

19 THE COURT: -- yes, ma'am. Thank you.

20 Ms. Martinez?

21 MS. MARTINEZ: Yes, Your Honor. I do want to  
22 report to the Court that the three councilors who  
23 participated in our monthly meeting on Tuesday approached  
24 the meeting in a very collaborative manner. They were very  
25 sincerely interested in what was going on. It was apparent

1     that they were very much engaged and had a sincere interest  
2     in wanting to know about the reform effort and the details  
3     of the reform effort and were very supportive of our police  
4     officers and the process that the police department is going  
5     through.

6             In addition to Councilors Benton and Jones, the  
7     third counselor who participated telephonically was  
8     Councilor Borrego, who is a City Councilor. And she was  
9     also very, very much engaged in the meeting. I think that  
10    they were all quite surprised to learn that Dr. Ginger has  
11    been working at a fifth of his regular consulting rate while  
12    he has been working on this project.

13            One of the things that surprised the DOJ team and  
14    Dr. Ginger is that we did not realize that the City is  
15    working on its budget now and will need to be addressing  
16    budgets for 2019 in April. And that is going to require the  
17    monitoring team to pull together its budget for 2019 sooner  
18    than what the monitoring team and DOJ had anticipated. I  
19    know that we had been thinking that the monitoring team  
20    needed to start pulling together a proposal in perhaps May  
21    or June for the parties to start thinking about and  
22    negotiating over, but it is obvious that this is something  
23    that's going to have to happen much sooner, since the City's  
24    budget has to be hammered out by April. And so this is  
25    going to be coming up at a point when the monitoring team is

1 working very, very intensely with our police department on a  
2 compliance plan and on making some very, very significant  
3 changes on the use-of-force aspects of the CASA.

4 So that's just an additional piece that we had  
5 not anticipated, so I just wanted to make sure that that was  
6 on the Court's radar, because it certainly, until Tuesday,  
7 had not been on ours.

8 THE COURT: Well, thank you. And I'll hear from  
9 Dr. Ginger.

10 Dr. Ginger, are you feeling better?

11 DR. GINGER: Yes, sir, I am. I think I'm  
12 actually almost back to normal by now. So I can carry on a  
13 conversation without coughing for at least a good two or  
14 three hours. That's a major step forward.

15 THE COURT: Well, that's great. I'm hoping this  
16 conversation doesn't last that long.

17 How -- although I'd like to hear your thoughts on  
18 Mr. Walz' report.

19 DR. GINGER: Your Honor, you know, as you well  
20 know, I was somewhat flabbergasted by the council's apparent  
21 need to take a look into what was, indeed, the low bid for  
22 this project. And I don't think, at least I hope, that  
23 neither the Department of Justice, the City of Albuquerque,  
24 or the Court have any problems with the quality of the work  
25 that this team is doing in Albuquerque. So I was kind of

1 surprised, I suppose, to hear that they were interested in  
2 an audit. I mean, I certainly understand their need for  
3 information to cover Years 5 and 6. And I'm obviously  
4 willing to produce a proposal responsive to that, but an  
5 audit just seem like a weird way to do it. But you know,  
6 we're going to continue focusing on the work that needs to  
7 be done.

8 We meet with the City at least five times a month  
9 through four weekly chief's meetings and a monthly parties'  
10 meeting. So there's a great deal of opportunity for input,  
11 exchange, discussion, even debate, and we'll keep those  
12 lines open as well.

13 THE COURT: Well, I appreciate that. And I have  
14 recognized, as you have, all along this process has to be  
15 accountable. I was surprised by the audit request back in  
16 the fall. I'm pleased to hear that, as Mr. Walz described  
17 it, it's been downgraded from audit to something other, but  
18 that's -- you -- you are responsible to me for the product,  
19 but responsible to City for the price of the product, and  
20 that's -- we've all understood that, I think. I just -- I  
21 don't want to have too much of your time and energy spent  
22 looking sideways when we have so much ground to cover going  
23 forward.

24 So Mr. Mowrer, did you want to be heard on that  
25 topic?

1 MR. MOWRER: No, sir, I don't believe so.

2 THE COURT: Well, great. So that's a great  
3 segue. I said don't want to spend too much time looking  
4 sideways as we're trying to go forward, and the second thing  
5 on the agenda is an update on setting the stage for the way  
6 forward.

7 Mr. Schmehl, do you have the lead on this?

8 MR. WALZ: Your Honor, before -- again I didn't  
9 mean to, but I have to interrupt like I did last time. May  
10 I be excused then again? Because we are watching the  
11 expenditures and that's all I have to say for this status  
12 report. So with the Court's permission, if there's no  
13 objection, I would ask that the Court respectfully let me be  
14 excused from this point forward.

15 THE COURT: Unless there's any objection,  
16 Mr. Walz, you're free to go on about your business.

17 MR. WALZ: Thank you very much, Your Honor. And  
18 thanks to all.

19 THE COURT: Yes, sir. Thank you.

20 Mr. Schmehl?

21 MR. SANDERS: Your Honor, this is Corey Sanders.  
22 I believe the Department of Justice, we're going to take the  
23 lead on addressing the two bullets under Issue Number 2.

24 THE COURT: Great.

25 MR. SANDERS: Your Honor, I will be handling the

1 second issue, CASA use of force, and my colleague, Paul  
2 Killebrew, will be handling the first point regarding the  
3 joint motion, Your Honor.

4 THE COURT: Thanks. Mr. Killebrew, then.

5 MR. KILLEBREW: Thank you, Your Honor. This is  
6 Paul Killebrew on behalf of the United States. We had  
7 anticipated filing today a joint filing regarding the way  
8 forward proposal that would have spelled out for the Court  
9 how that proposal is going to be implemented and practiced  
10 which will require the suspension of paragraph 308.  
11 Paragraph 308 involves the timing of the monitor's report.  
12 The next report is due in May, and the joint stipulation for  
13 a suspension that we would have filed would have said "we're  
14 not going to do that; instead, here's what we're going to  
15 do...."

16 We have drafted the joint suspension from the  
17 City a couple days ago. And in reviewing it, we realized  
18 that, while we had all agreed in principle on the approach  
19 that would be taken, as in many things, the devil is in the  
20 details. And when we started looking at the details and  
21 thinking them through, it's not that we have an objection to  
22 what was on the table, it's more that we thought that these  
23 details deserved a little more thinking through. And I'm  
24 happy to go into those things, if the Court would like, but  
25 we've raised these concerns with the City Attorney's Office

1 this morning and with Dr. Ginger before the status  
2 conference. And everyone is in agreement on these things,  
3 that these are all issues that warrant being worked out.  
4 And our hope is that if we can work them out, the plan that  
5 we will present to the Court will make a lot more sense,  
6 will be a much more solid plan and will clearly identify for  
7 the Court what's going to be happening during this period  
8 between now and when you're going to get the next compliance  
9 report.

10 So that's generally where we're at and -- but  
11 that means that we will not be filing a joint stipulation  
12 today. We need some more time to work on it. At this  
13 point, we don't believe that it is -- it may be possible to  
14 set a deadline, but we have concerns that we would set a  
15 deadline and then have to move it again, so -- we've done  
16 that twice already, so we're a little bit reluctant to set a  
17 deadline because some of the details we need to work out may  
18 simply take some time. There's some information that we  
19 need from APD that may take them some time to work out.

20 So that's where we're at today. Another thing I  
21 wanted to raise with the Court about this filing: You may  
22 remember, Your Honor, that when the parties moved to enter  
23 the CASA as an order of the court, the Court received  
24 briefing from the amici. And the amici representing the  
25 McClendon class pointed out that the CASA, as it was



1 written, seemed to permit the parties to modify the court  
2 order without a subsequent court order. And Your Honor  
3 spelled out a process in the order entering the CASA as an  
4 order that the parties would follow if they sought to modify  
5 the CASA.

6 The paragraph that contains the modification  
7 provision is the same paragraph that contains another  
8 provision on suspending CASA requirements. And so the  
9 parties, in working on this filing have taken the approach  
10 that we would follow the same procedures for this suspension  
11 of paragraph 308 that we would have filed -- that we would  
12 have followed for a modification of 308. In other words,  
13 we're going to spell out the suspension that we're seeking,  
14 that we're stipulating to, the reasons -- the purpose of the  
15 suspension and the circumstances that made it necessary.  
16 And we hope that's satisfactory to the Court.

17 THE COURT: Well, here's the thing: We need to  
18 move forward. We had a great visit the other day and all --  
19 and had all of our energies pointed in the same direction,  
20 but this is, as Counsel just said, Mr. Killebrew just said,  
21 this is the second or third time that we've proposed a date  
22 and we've pushed it out. And I -- I don't want to give the  
23 impression that by my willingness to accept the prior two  
24 extensions that I'm just -- I'm open to unlimited  
25 extensions. That's not so, and you-all need to understand

1     that. I understand devils and I understand details, and  
2     you-all know them better than I do in this regard, but when  
3     you give me a proposed next deadline, I'm going to say  
4     let's -- let's adhere to that. Because as I mentioned the  
5     other day, I'm getting older all the time, I don't know  
6     about the rest of you, but I want to see this thing through.  
7     And if we extend it too much, I won't be around.

8                 So that was Mr. Killebrew. Mr. Sanders, did you  
9     have something -- well, before we go to the second bullet,  
10    does anyone else want to be heard on this proposed  
11    extension?

12                DR. GINGER: Your Honor, this is Jim Ginger. If  
13    I can make a brief comment?

14                THE COURT: Yes, sir.

15                DR. GINGER: This next step is our last best  
16    chance at getting this right. I've reviewed the City's  
17    proposal for a document to go to the Court outlining in  
18    detail the way forward that, frankly, is based on an idea  
19    that I proposed to the parties as a possible way to resolve  
20    this. And that idea went out as just that, it was an idea.  
21    It was a fairly well sketched out conceptually, but as the  
22    Court is well aware, in this process, the devil is in the  
23    details. And hammering those details out is something that  
24    I recommended be done by the parties. And that, in and of  
25    itself, is -- I'll take -- I'll take the blame for it.

1 That's probably one of the reasons we're in a delayed status  
2 right now is that we haven't coalesced. We've coalesced,  
3 Your Honor, the concept. We haven't coalesced around the  
4 process.

5 And I agree with the Department of Justice, we're  
6 better off getting off on a very solid foundation where, you  
7 know, we've identified goals and objectives and time lines.  
8 And frankly, at this point, we have some goals and  
9 objectives and we have some time lines, but we don't have a  
10 coherent plan. And I think it would be detrimental to the  
11 progress of the process overall if we moved forward at this  
12 point.

13 So I have to support DOJ's request for an  
14 extension on this. You know, an extension without a time  
15 line bothers me, too, because as the Court knows, I'm a  
16 goal-objective and time-line kind of fellow. But I would  
17 much rather take another few weeks and get a reliable plan  
18 to the Court with goals, objectives, and time lines as  
19 opposed to what we have right now, which is basically a  
20 collection of goals. I think we're all in agreement on what  
21 the goals ought to be, the DOJ, the City, and the monitoring  
22 team. But until we can overlay those goals with objectives  
23 and time lines, we really don't have a plan.

24 And I think, truth be known, to make a long story  
25 short, the reason we're in the mess right now is we never

1     could get a real plan out of the old APD. And I would much  
2     rather have the new APD and Chief Geier and his people  
3     working from a good solid plan as opposed to what we saw  
4     last time, which was just a bunch of frenetic activity with  
5     no concentrated focus, no goals, no objectives, no time  
6     lines.

7                 So I would support the parties' request for an  
8     extension.

9                 THE COURT: Well, as we are going to discuss in  
10    just a moment on the third item on the agenda, as I  
11    indicated in our in-person session the other day, if the  
12    parties want me to be in Albuquerque for the 15<sup>th</sup>, I've  
13    changed the schedule around, so that I can be and I will be.  
14    And it's -- I expect that we're going to have this way  
15    forward plan in place with the details hammered out before  
16    that time. And I think, if we don't have it before that  
17    time, it's going to be embarrassing, because we're all, in a  
18    very public way, going to be addressing the community and  
19    saying "gosh, we've been at this for, you know, nearly four  
20    years and we're just now figuring out a way forward." In  
21    big-picture sort of analysis, that's going to be  
22    embarrassing. I don't want that for you-all. I don't want  
23    that for the process. I want something in place. So I  
24    don't know what sort of open-ended extension you were  
25    seeking, but I'm going to suggest it's in everyone's best

1 interest to have something done before we're in a very  
2 public setting on March 15<sup>th</sup>.

3 Mr. Sanders, do you want to address the second  
4 point?

5 MR. SANDERS: Yes, Your Honor.

6 Your Honor, regarding the second point, we  
7 brought this issue before the Court in September of 2017.  
8 The second issue centers around supervisory investigations.  
9 And we've been in discussions with the monitor as well as  
10 with the City. The current use-of-force platform involves  
11 two levels. And we've been speaking with all the parties to  
12 think about transitioning to a three-level, which would  
13 include low-level forces, intermediate forces and serious  
14 uses of force, and how each of those types of forces would  
15 be investigated by supervisors with the goal of trying to  
16 identify efficiency, reducing burdens on first-line  
17 supervisors and just overall compliance with the City's  
18 provisions.

19 We met back in January, Your Honor, and we  
20 discussed how the changes from the two-level platform to the  
21 three-level platform won't impact various CASA-related  
22 provisions. The United States provided the City a copy of  
23 some proposed changes to the CASA. And that was received  
24 very well during our discussion on January 29<sup>th</sup>, Your  
25 Honor. To give the Court an idea, I believe over 50

1 provisions will be impacted if we transition from a  
2 two-level to a three-level use-of-force platform. We are  
3 waiting for the City to give us versions of the CASA that  
4 they've made changes to and we have a meeting scheduled for  
5 tomorrow, Your Honor. We're hoping that after the meeting  
6 tomorrow, we will be able to reach an accord on all the  
7 provisions that will be impacted by the changes.

8           Once we reach that accord, Your Honor, the  
9 parties anticipate filing a joint motion letting the Court  
10 know about all the modifications. And we would seek  
11 approval of the Court to accept the modifications through  
12 the joint stipulation, Your Honor.

13           THE COURT: And Mr. Sanders, do you have any time  
14 line in mind for when that -- I can expect that motion?

15           MR. SANDERS: Your Honor, ideally, we would like  
16 to get that done before the meeting with the -- the  
17 in-person status conference and we are working very hard to  
18 reach that deadline, Your Honor. And if the Court would  
19 like us to give a status -- or if we could have a status  
20 call before the in-person hearing, then we can certainly  
21 provide the Court an update on where the parties are as far  
22 as a viable joint stipulation, as well as the modification  
23 provisions of the CASA.

24           THE COURT: Well, what I'm hopeful is I have  
25 updates and perhaps the joint motions on both of these

1 bullet points prior to that public hearing. But if not, I'm  
2 going to have you-all state in that very public forum where  
3 we are and why we don't have that joint motion yet.

4 Mr. Mowrer, do you want to be heard on these  
5 issues?

6 MR. MOWRER: No, Your Honor. Just the only thing  
7 I would add in on Bullet Point 2 is that all the parties  
8 spent about two and a half hours the other day working on  
9 this. I think everybody's pretty much in agreement to the  
10 language changes. And we're looking very forward to getting  
11 this accomplished. I think all the parties are working  
12 toward the goal of accomplishing this because it will -- I  
13 think it will go forward with the concepts that everybody's  
14 been talking about today in simplifying this process and  
15 making it easier for parties to comply.

16 THE COURT: Well, great. Great. Thank you.

17 Mr. -- or Dr. Ginger, do you have anything else  
18 on this point?

19 DR. GINGER: Nothing else on this particular  
20 topic, Your Honor. I'll have some things to say on Item  
21 Number 3, which should be informative, I guess, of what the  
22 monitoring team is thinking about a way forward.

23 THE COURT: Well, I think, unless something else  
24 needs to be considered on point 2, let's move to point 3.  
25 As I indicated a moment ago, I'm making plans to be there

1 for an in-court status conference on the 15<sup>th</sup> of March.  
2 And I'm thinking we're going to start it in the afternoon so  
3 I can go up in the morning. I've got obligations here the  
4 night before. So 1:30 on Thursday, March 15<sup>th</sup>. And we'll  
5 just stay tuned for a location. I'm not sure at this point  
6 where we'll be.

7 But with that, Dr. Ginger?

8 DR. GINGER: Thank you, Your Honor. And I  
9 will -- I will claim a good chunk of the blame for this  
10 apparent loss of focus. I mean, it's not really a loss of  
11 focus, it's an inability for the parties and the monitoring  
12 team to clearly articulate to the Court what it is we're  
13 planning to try to work out in order to make up for all the  
14 lost time over the last couple of years.

15 What I proposed to the parties was a two-part  
16 process for a way forward, which, in effect, condenses and  
17 compresses all of the -- all of the processes we engaged in  
18 with the old APD command staff and sort of condenses that to  
19 the most critical pieces that we plan on providing to the  
20 new APD. We've already provided a large chunk of it through  
21 telephone calls and documents and that sort of thing, but  
22 we'll actually be on site for the week of the 12<sup>th</sup> through  
23 the 16<sup>th</sup> and then the following week as well. So we'll be  
24 on site for a two-week site visit to sort of rejuvenate the  
25 compliance processes for APD, the amount of -- the amount of



1 focus and attention that's going to be required from the  
2 monitoring team over the next few months to get APD to the  
3 point that it's back on track.

4 At this -- at this stage of the game, I think  
5 everybody understands they are seriously off track. That  
6 had nothing to do with this new command staff that is  
7 present. They've sort of inherited the mess. And what I've  
8 tried to do is design a way forward that will allow the new  
9 APD to pick up the pieces and start making progress  
10 relatively rapidly and, basically, to help the Court  
11 understand what I'm recommending happen, is a highly  
12 compressed and highly focused process that was provided  
13 originally to the old APD when this project first started.

14 We had a fairly protracted period of technical  
15 assistance where we worked with key command staff members on  
16 a Use of Force Policy, on policy development, on training,  
17 planning and development, on supervision, and on command  
18 levels. And what we plan on doing -- that period -- that  
19 lasted for a period of about 18 months until we thought they  
20 had had enough technical assistance and APD was ready to  
21 start moving forward. Unfortunately, that movement forward  
22 never really happened with the old APD. What we're planning  
23 on doing, given the budgetary constrictions that we're  
24 confronting as a monitoring team -- in other words, we've  
25 spent most of our technical assistance monies already, and

1 yet we find a need to have to do that again. And I've  
2 designed a process that I think, based on my experience,  
3 will allow the new APD to pick up the pieces -- I mean,  
4 there's a lot of things that have been developed that we --  
5 quite frankly, we just need to throw away and start over  
6 again, but that's not everything. We can -- we can salvage  
7 some of the work that was done in the first couple of years.

8 But what we're planning on doing for the next  
9 site visit is a highly compressed, a highly intense process  
10 of strategic planning with APD command so that they can  
11 clearly and effectively identify their strengths; that they  
12 can acknowledge, embrace, and work with and through their  
13 weaknesses, so they can identify spots where there are  
14 opportunities, not to just throw out all the work that's  
15 been done before, but to modify it somewhat and salvage  
16 that; and probably most importantly, so that they have a  
17 clear, concise, and actionable understanding of the threats  
18 that exist within the organization related to this project.

19 So that's the purpose of the next two weeks of  
20 site visit. We've already begun that, Your Honor, from the  
21 monitoring team's perspective, with Chief Geier's full  
22 support, with Deputy Chief Garcia's direct involvement.  
23 We've already started working through this, but you know, I  
24 am of the opinion that, you know, based on what Chief Geier  
25 was handed, I guess, back in December, he's -- any new chief

1 would need a great deal of direct involvement with the  
2 monitor and the monitoring team in order to work out a way  
3 forward, given the status of the agency as it was when he  
4 walked into the job. And what we're trying to do over the  
5 next few weeks is to take what -- really take what we had  
6 already done with APD in terms of finding a way forward and  
7 establishing process to get them where they needed to be.  
8 That was a -- that was an engagement and an effort that  
9 was, in effect just not accepted by the old APD. We'll try  
10 to give it to APD, the new APD, again.

11 We've already started with that process. As I've  
12 mentioned, I've been in pretty extensive and intensive  
13 contact with APD over the past few weeks. Many members of  
14 the monitoring team have been in contact with command staff  
15 as well. So we've already started the process. We're  
16 just -- in effect, we're trying to design a super-charged  
17 initial process for the new APD so that they can get up on  
18 their feet and moving as quickly as possible.

19 So we've already started that work. We will  
20 solidify that during the two weeks of the next upcoming site  
21 visit. We will provide as much technical assistance as is  
22 humanly possible in that two-week period of time. As I say,  
23 we've already started on it. Our goal is to build a  
24 detailed understanding at the new APD of the compliance  
25 process, of implementation modalities that stand a good

1 strong chance of success, and to get them to understand how  
2 all that interrelates with the requirements of the CASA.

3 THE COURT: Thank you, Dr. Ginger.

4 Does anyone else want to be heard on the proposal  
5 about the site visits upcoming?

6 If not, Ms. Martinez, are you going to take up  
7 this next bullet point?

8 MS. MARTINEZ: Your Honor, one of the things that  
9 we are contemplating during the second week of the site  
10 visit is some kind of CPC summit or meeting. And just last  
11 night, Associate Monitor Steve Rickman sent us an e-mail  
12 indicating that he was, indeed, planning to be here on  
13 March 14<sup>th</sup> and 15<sup>th</sup> to meet with the members of the City  
14 team who are handling the community engagement piece for the  
15 City and for the Police Department.

16 Dr. Ginger and Mr. Schmehl have let the Court  
17 know about the work that is going on at APD in terms of the  
18 Department's reform efforts for the Police Department,  
19 itself. But I would like to just let the Court know that  
20 the City is doing -- and the Police Department is doing a  
21 tremendous amount of work also on the community front. For  
22 example, I know that the Court has heard repeatedly over the  
23 last two years from the CPCs and the CPOA and POB about the  
24 frustrations that they have experienced. And just  
25 yesterday, I learned about the fact that the City and the

1 Police Department already have responded to the requests  
2 from POB and the CPCs for a restructuring of the citizens  
3 police academy that would better meet the needs that they  
4 have to get their members trained so that they can  
5 participate in the functions that they have to fulfill under  
6 the CASA. And it's just terrific. They have completely  
7 revamped the training that the CPCs, the POB members have to  
8 have to do their work.

9 And it's just heartening. And I applaud the --  
10 we all applaud APD and Chief Geier and the City for moving  
11 so quickly on this, because the community engagement piece  
12 is also a tremendously important part of this process. And  
13 we know that they are working so very hard on everything  
14 else. And I, quite frankly, was really surprised to see  
15 that they managed to also take care of this piece.

16 THE COURT: Well, thank you, Ms. Martinez. And  
17 you know, I love good news. Thank you.

18 Mr. Schmehl, did you have something on this  
19 point?

20 MR. SCHMEHL: Yes, Your Honor, I would just add  
21 the City is fully supportive of the summits. It looks like  
22 it's going to take place in the middle of March. And I look  
23 forward -- it looks forward to some good interaction with  
24 the community CPCs. And that's really all I would add, Your  
25 Honor.

1 THE COURT: Thank you.

2 And Mr. Mowrer?

3 MR. MOWRER: No, sir, I have nothing to add on  
4 this point. Thank you.

5 THE COURT: Well, that brings us to the end of  
6 the agenda. But before we conclude, Ms. Martinez just had  
7 some really positive things to say about how quickly the new  
8 command staff has covered a lot of bases, but particularly  
9 the community-engagement aspect. And Chief Geier and Deputy  
10 Garcia, I'm sorry, I don't know everybody that's there from  
11 APD, but thank you for your efforts. They -- you know, they  
12 don't go unrecognized. A lot of what policemen do every day  
13 does go unrecognized, I'm sure, you know, in a -- in what  
14 could be a more positive sense, but I really do appreciate  
15 all of your efforts because we understand this is -- it's --  
16 before the community can really buy into this, they have  
17 to -- they have to feel engaged and they have to feel  
18 supported. And it sounds like -- it sounds like that's what  
19 you're doing, so I really do appreciate that.

20 Is there anything else that we can help with  
21 today, folks?

22 MR. KILLEBREW: Your Honor, this is Paul  
23 Killebrew for the United States.

24 THE COURT: Yes, sir.

25 MR. KILLEBREW: I've been considering your

1        comments about having these stipulations regarding the way  
2        forward and the use-of-force changes in before the hearing  
3        that we are going to have on March 15<sup>th</sup>. And I want to  
4        assure the Court that we are committed to making sure that  
5        those filings are in, in advance of that hearing. It occurs  
6        to me while we were speaking that we will have community  
7        stakeholders and amici present at the public hearing, and we  
8        owe to them to ensure that these filings are made well  
9        enough in advance of that hearing so that they -- if they  
10       have any thoughts or concerns about either of those filings,  
11       they can be heard on March 15<sup>th</sup>.

12                So I will commit for the United States that we  
13       will endeavor to get these filings in well enough in advance  
14       and to ensure that community stakeholders and amici are  
15       aware of them and so that any of their views can be heard at  
16       that time.

17                THE COURT: Well, I certainly appreciate that  
18       commitment and will look forward to those filings and seeing  
19       you-all in the Big City on March 15<sup>th</sup>.

20                Unless there's anything else today? We'll  
21       conclude then. Thanks very much. We're adjourned. You-all  
22       have a great day.

23                (The proceedings concluded at 11:49 A.M.)  
24  
25

1 UNITED STATES OF AMERICA

2 DISTRICT OF NEW MEXICO

3  
4 CERTIFICATE OF OFFICIAL REPORTER

5 I, Vanessa I. Alyce, RPR, NM CCR, and Federal Official  
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14 transcript page format is in conformance with the  
15 regulations of the Judicial Conference of the United States.

16  
17 Dated this 15<sup>th</sup> day of February 2018.

18  
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